

INDIANA PESTICIDE GENERAL PERMIT (PGP) RESPONSE TO COMMENTS FOR THE ISSUANCE OF THE FINAL NPDES GENERAL PERMIT OCTOBER 31, 2011

The Draft NPDES General Permit for the Pesticide Applications was made available for public comment from March 5, 2011 through April 4, 2011 as part of Public Notice No. 2011-3B-PGP-RD. During the official comment period (as set forth by 327 IAC 5-3-12), several comment letters and comments were received via U.S. mail and via email.

A summary of the comments received and the IDEM response to those comments is given below including any changes made to the draft permit and fact sheet.

Comments # 1 and 2 were received from Mr. Kevin M. Pierard, Chief of the NPDES Programs Branch of U.S. EPA Region 5. These comments are listed below and are followed by IDEM's response to each comment:

Comment #1: The U.S. Environmental Protection Agency has reviewed the Indiana Department of Environmental Management (IDEM) draft permit and fact sheet for the Application of Pesticides. We will not object to issuance of the permit as drafted provided the following provision, which was discussed with you and your staff, is included in the Monitoring and Reporting Requirements section of the permit: "All permittees must monitor for, identify and report adverse incidents."

Response #1: IDEM has amended the Monitoring and Reporting Requirements section on page 5 of the draft Pesticide General Permit (PGP) to incorporate the requested provision.

Comment #2: Additionally we recommend that the fact sheet describe record keeping that is required by various Indiana regulatory programs and indicate that these records are available to IDEM (the NPDES permit authority). A description of record keeping requirements is included in a March 25, 2011, electronic mail message from David Scott, Pesticide Administrator, Office of Indiana State Chemist.

Response #2: IDEM has amended the Permit Fact Sheet to incorporate EPA's recommendations.

Comment # 3 was received from Mr. Gary Bennett, Secretary of the Indiana Pest Management Association. This comment is listed below and is followed by IDEM's response to the comment:

Comment #3: After attending the Indiana Pesticide Review Board Meeting on March 31, 2011, it is evident that a critical user group has been omitted from the list in Table 4. Pest Management Professionals (Certified Pesticide Applicators in Categories 7A and 7B) are not making direct pesticide applications to water, the dwellings or structures may be immediately adjacent to water (lake impoundments, streams, or rivers). These applications are made to exterior foundations and possibly under the soffits of the roof to control pests from entering the house. They may also include treating such structures as boat houses or decks that are adjacent or above the waters. While Pest Management Professionals take great care in these applications and make every effort

to avoid drift or runoff into the water, we as an industry do not want to be construed as not complying with the Clean Water Act and the NPDES permitting.

Including this user group in Table 4 would maintain consistency with the other listed groups within the table. Table 1 of the NPDES General Permit would require most companies in Indiana to file Notice of Intent since these pesticide applications made to structures near or over water are made with the purpose of controlling public health pests. Including Pest Management Professionals would limit the amount of individual permit that would undoubtedly come to IDEM as a result of compliance with the NPDES permitting Notice of Intent. As certified and licensed pesticide applicators, we currently fall under the purview of the Office of Indiana State Chemist. If any adverse event of pesticide contamination were to occur, such as a leak or spill, we are currently required to notify Indiana Department of Environmental Management.

Therefore in order to be in compliance with the Clean Water Act and the NPDES permitting, we, as an industry, request that Category 7A & 7B commercial pesticide applicators be included in the user groups in Table 4 of the proposed NPDES General Permit.

Response #3: Table 4 of the draft PGP has been amended to clarify that an entity which has received a “GN number” issued by the OISC is not required to submit a Notice of Intent. A GN number is the OISC identifier number that is assigned to a “government or not-for-hire pesticide application operating location”. There may be one or many licensed applicators linked to that operating location. Just like “for-hire business locations”. The GN number issued by the OISC functions as their certification. If a person or an entity has been issued a GN number, they do not need to file an NOI.

IDEM has granted the request to add Category 7A applicators to Table 4 of the PGP. This category represents Industrial, Institutional, Structural, and Health-Related Pest Management. IDEM is not granting the request to add Category 7B (Termite Control) applicators to Table 4 of the PGP. Termite control products are injected or incorporated into soil around structures and must by law (product label) be kept out of water. If an applicator thinks there is a possibility of getting any termiticides in water he needs to not make the application at all.

Comments #4 through #11 were received from Mr. Stan Pinegar of Indiana ENERGY Association. These comments are listed below and are followed by IDEM’s response to each comment:

Comment #4: The primary concern we have over the proposed PGP is the confusion created by what appears to be multiple areas of jurisdiction by various agencies of state government as well as the federal government. It is difficult for experts in the ranks of IUG companies to delineate which agency has jurisdiction over the wide array of requirements provided in the draft. A clearer explanation of how IDEM, Office of State Chemist, Department of Natural Resources, and the federal government will work

together to administer the General permit and how permit holders will be required to work with each agency is needed.

Response #4: No changes have been made to the draft PGP as a result of this comment. While IDEM staff understands there is some perceived confusion regarding the “multiple areas of jurisdiction”, these questions will be resolved via public outreach by IDEM and OISC.

Comment #5: In addition we are concerned by what appears to be a “hard” start date of April 9, 2011. As I am sure you are aware, U.S. EPA petitioned the U.S. Court of Appeals, for the Sixth Circuit (“Court”) for a 6 month extension from April 9, 2011 to October 31, 2011, in which to implement the program. EPA cited the need for additional time in order to continue consultations on the Endangered Species Act, develop an electronic Notice of Intent database, allow states to finish developing their permits and allow additional outreach to stakeholders. The Court recently granted EPA’s request for the extension. We have been notified that IDEM will follow the lead of the Court and EPA and will not implement the program until the end of October. We assume IDEM will take appropriate procedural action to ensure the extension is followed in Indiana.

Response #5: Due to the fact that U.S. EPA was granted their requested extension until October 31, 2011 to issue and implement its own PGP, the “hard start date” of April 9, 2011 which was specified in the draft PGP is no longer applicable.

Comment #6: As IDEM moves forward to prepare the program for implementation, we respectfully make the following suggestions:

Item 1 of 6. EPA has not issued the final rule for the PGP. To ensure comprehensive comments are provided on IDEM’s draft PGP, it is essential that EPA’s final rule be published and available for review.

Response #6: IDEM staff concurs with this statement. The new effective date for the Pesticide General Permit is October 31, 2011, in accordance with the court-approved extension.

Comment #7: Item 2 of 6: We suggest including, within the PGPs definitions most likely to be relied upon in use of the permit rather than incorporating definitions by reference.

Response #7: IDEM staff has determined that incorporating by reference the definitions that already exist in the various regulations is the most expedient way to define the terminology. IDEM plans to conduct public outreach sessions and may develop and publish a guidance document if there is significant public interest.

Comment #8: Item 3 of 6: The provisions pertaining to the scope of coverage in the draft PGP are not clear. Table 1 entitled “Pesticide Uses Covered Under This General Permit” also provides an “Annual Treatment Area Threshold” for each of four general covered pesticide activities. This could be interpreted as applications by an entity subject to the annual treatment area, but below the annual thresholds, not being subjected to the PGP. The definition of the “Annual Treatment Area Threshold” in the

draft PGP indicates that the purpose of the threshold areas is simply to designate which persons applying pesticides are required to submit NOIs. To clarify the purpose of Table 1, it is recommended the title be changed to read “Annual Treatment Thresholds for Determining NOI Submittal Requirements.”

Response #8: The final Pesticide General Permit has been modified to change the Title of the Column in Table 1 to read “Annual Treatment Area Thresholds for Determining NOI Submittal Requirements”.

Comment #9: Item 4 of 6: The water-quality based effluent limits (WQBELs) in the Draft PGP are problematic for practical compliance, especially considering the reference to numeric water quality criteria. This could imply a requirement for monitoring and sampling of pesticide discharges to assure compliance with established numeric standards. The draft PGP does not include monitoring requirements involving sampling of discharges. Instead, the PGP focuses on monitoring the pesticide application operations to ensure the least amount of pesticide is applied which will provide effective pest control and assurance the application equipment is properly maintained and calibrated. It may be helpful to include these monitoring provisions in the PGP to clarify whether chemical monitoring of discharges will be required.

Response #9: Under the Clean Water Act and 327 IAC 5-2-10(7), water quality-based effluent limitations can be narrative rather than numeric. The permit holder must control its discharge as necessary to meet applicable water quality standards. Any discharge that results in an excursion of any applicable numeric or narrative water quality standard is prohibited. In general, based on the data included in the record and the additional requirements in this permit in addition to FIFRA, EPA and IDEM expect that compliance with the technology-based effluent limitations and other terms and conditions in this permit will meet applicable water quality-based effluent limitations. IDEM also notes that among the eligibility requirements for coverage under this permit are requirements that the permit does not cover discharges of any pesticide into a water impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient, or into an Outstanding State Resource water (except as provided in Table 1. While not specifically framed as effluent limitations, these eligibility conditions further help to protect water quality on a water-body-specific basis.

No changes have been made to the draft PGP as a result of this comment.

Comment #10: Item 5 of 6: It is recommended that assurances be included in the WQBEL section which provide the application of pesticides for use in aquatic settings in accordance with approved labeling and manufacturers’ instruction are deemed to be in compliance with the WQBEL of the PGP.

Response #10: If the person applying pesticides follows the approved labeling and manufacturers’ instructions, then they are most likely going to be in compliance with the

WQBEL of the PGP. However, IDEM does not include assurance wording in NPDES permits. No changes have been made to the draft PGP as a result of this comment.

Comment #11: Item 6 of 6: No information or direction is provided in the draft PGP concerning what is to be done with the Pesticide Discharge Management Plan (“PDMP”), if one is required. Is it intended that the PDMP be developed and implemented by the permit holder and a copy maintained for agency inspection without IDEM and State Chemist approval? Alternatively, is the intent to have the PDMP reviewed and approved by IDEM and/or the State Chemist before it is considered final? Clarification on these issues is requested as well.

Response #11: Yes, it is intended that the PDMP be developed and implemented by the permittee without IDEM or OISC approval. OISC intends to develop a generic PDMP. Persons can elect to use the generic plan or develop their own. A copy of the PDMP shall be maintained by the permittee and shall be made available for agency review upon request.

Comments #12 through #24 were received from Mr. Howard Lewis of Duke Energy. These comments are listed below and are followed by IDEM’s response to each comment:

Comment #12: The Draft PGP seeks to incorporate and apply the regulatory requirements from a number of state and federal agencies based, in many cases, on sources of authority outside those pertaining to IDEM’s statutory charge to implement the NPDES program of the federal Clean Water Act. These include (i) the Office of the Indiana State Chemist and its regulations regarding pesticide registration, use and application, (ii) the Indiana Department of Natural Resources with respect to its permitting process for application of certain pesticides to water pests and its authority over nongame endangered and threatened species, and (iii) the U.S. EPA with respect to several programs, including pesticide labeling and use of pesticides under declared emergency conditions pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), protection of endangered species under the federal Endangered Species Act, and emergency reporting of releases of hazardous substances under Section 311 of the Clean Water Act and implementing regulations.

The primary reliance of the Draft PGP is upon the Office of the Indiana State Chemist (“State Chemist”). Indiana statutes governing pesticide registration, use and application and rules of the State Chemist to implement those statutes would constitute the technology-based effluent limitations of the Draft PGP permit that permittees are to comply with. Also, the State Chemist is charged under the Draft PGP with the responsibility of devising a prototype for permittees to use in developing Pesticide Discharge Management Plans (PDMPs).

These provisions raise questions of authority and responsibility. By the terms of the Draft PGP, IDEM appears to be undertaking the enforcement of rules and statutory obligations concerning pesticide use and application that are ostensibly the

responsibility of the State Chemist. Does IDEM possess legal authority to enforce rules that are the charge of the State Chemist? Or does IDEM intend by the Draft PGP to implicitly delegate enforcement of the technology-based effluent limits or the PDMP requirements to the State Chemist? If so, can IDEM delegate such responsibilities?

Similar questions arise respecting the Draft PGP's nominal requirements for permittees to comply with the federal Endangered Species Act and similar state requirements under the jurisdiction of the IDNR or with federal spill reporting requirements under Section 311 of the CWA.

Our concern is that incorporation of these statutory and regulatory requirements into the Draft PGP without an adequate foundation in WPCB rules authorizing the Draft PGP would be contrary to IDEM's enforcement authority. Pursuant to IC 13-15-2-2(c)(2), rules adopted by IDEM must provide that all limits, conditions, and standards contained in a permit issued under the rules are enforceable under IC13-30-3. Section 3 of the emergency rule providing authority for IDEM to issue the Draft PGP provides that "any person violating any provision of a permit issued under this document shall be subject to enforcement and penalties as set forth under 327 IAC 15-1-4 and IC 13-30." Although the PGP emergency rule states that the PGP will be enforceable under IC 13-30, it is unclear how certain referenced provisions of federal law and Indiana State Chemist and IDNR rules would be enforceable by IDEM. Simply stating that the permit provisions will be enforced under IC 13-30-3 is insufficient to satisfy the intent of IC 13-15-2-2(c). IDEM must have actual authority to enforce the provisions of the PGP in order for the permit to be issued in compliance with the PGP emergency rule and IC 13-15-2-2(c). IC 13-30-3-1 provides that IDEM has the authority to investigate alleged violations of only the following environmental management laws, air pollution control laws, water pollution control laws, IC 36-9-35 (solid waste disposal) and a rule or standard adopted under an environmental management law, air pollution control law, or water pollution control law. Similarly, IC 13-30-3-11 authorizes the Commissioner to order persons to cease and desist from violations of the same set of laws (omitting IC 36-9-35), and to impose monetary penalties for violations of those laws. Based on this, IDEM does not appear to have clear authority to enforce statutes and rules pertaining to other state or federal agencies unless these provisions have been incorporated into WPCB rules. Even then some federal statutes require EPA approval of state program rules and in other cases preempt state authorities altogether.

Response #12: IDEM disagrees with these assertions. IDEM has authority to implement and enforce all provisions of the Clean Water Act (CWA), under which this particular general permit is being issued. Further, IDEM has authority to issue the PGP as a general permit under the CWA without reliance on existing general permit regulations after passage of P.L. 81-2011 in the 2011 Indiana General Assembly. When there are already existing regulatory programs which are already conducting much of the regulatory oversight envisioned by this new PGP, it does not make sense to create duplicate layers of oversight. A Memorandum of Understanding between the state regulatory agencies will be in place to ensure that there are clearly defined roles and responsibilities in the administration and implementation of the PGP. IDEM has previously utilized a similar approach in the implementation of 327 IAC 15-5 for

Discharges of Storm Water Runoff from Construction Activity. No changes have been made to the draft PGP as a result of this comment.

Comment #13: As implied by the preceding questions, along with the authority issues, there is a lack of clarity concerning the role of the State Chemist's Office in the implementation of the Draft PGP if it were issued in its present form. For example, are permittees to consult with the State Chemist concerning questions or interpretation on the technology-based requirements or the preparation of the PDMPs? The draft is silent on the question of whether PDMPs are to be sent to IDEM or the State Chemist (or neither) for approval.

To some extent, it is suggested that questions of IDEM authority to require compliance with requirements of other agencies can be sidestepped by addressing an issue with a notification of a potential obligation to comply with the other agency's requirement rather than as a bald directive to comply. An example of this is provided in the attached markup of the Draft PGP with respect to the Endangered Species Act.

Response #13: OISC will be taking a lead role in the implementation of this PGP and especially in the development of the PDMPs. As previously stated in Response #11, it is intended that the PDMP be developed and implemented by the permittee without IDEM or OISC approval. A copy of the PDMP shall be maintained by the permittee and shall be made available for agency review upon request. Language has been added to the General Permit to clarify this point.

Comment #14: Timing of Authorization to Discharge under Permit: The Draft PGP is unclear as to when a permittee is authorized to discharge under the permit. This is more clear under the EPA's draft PGP and the attached markup includes suggested provisions on pages 1 and 2 to explain the timing of discharge authorization for various types of operator based on the federal draft permit.

Response #14: Authorization to discharge shall occur upon the effective date of the general permit. Please note that the PGP has been changed to clarify the effective date.

Comment #15: Expiration Date: The expiration date of the Draft PGP should be clearly stated. This has been included in the markup.

Response #15: A cover page has been added to the PGP and it clearly states the issuance date, effective date, and expiration date of the PGP.

Comment #16: Continuation of Expired Permits: Duke Energy suggests that IDEM consider including a provision akin to Condition 1.2.4 of the draft EPA PGP that would expressly recognize that the PGP will continue in effect past its expiration date if IDEM has not reissued the general permit prior to its expiration date. This could be based on the authority of IC 13-15-3-6 analogously to EPA's reliance upon 40 CFR 122.6 for its continuation provision. However, it would be preferable for the rule authorizing

issuance of the general permit to interpret IC 13-15-3-6 as providing for continuation of the effectiveness of the permit beyond its expiration date.

Response #16: A new cover page has been added to the general permit which, among other things, contains the following language: “In accordance with IC 13-15-3-6, 40 CFR 122.6 , and 123.25, the conditions of the permit remain fully effective and enforceable after the expiration date of the permit if the permittee has submitted a timely NOI application for a new permit and IDEM has not, through no fault of the permittee, issued a new permit on or before the expiration date of the previous permit.”

Comment #17: Definitions: Rather than make an implied incorporation by reference of definitions from a number of state and federal statutes and rules, as well as EPA’s draft PGP, we suggest that it would be better practice to replicate in full in the IDEM PGP those definitions most likely to be needed in use of the PGP. While incorporation by reference of statutes and rules in the PGP can be appropriate if the WPCB rules for the NPDES program (or more specifically, the emergency rule for authorization to issue the PGP) incorporate such other laws, it seems questionable to imply incorporation by reference in the PGP of laws that have not been referenced or incorporated into WPCB rules that provide authority for the PGP. In addition, this approach would tend to make the PGP more user-friendly.

Response #17: See Response #7.

Comment #18: Scope of General Permit Coverage: The provisions of the draft PGP are unclear with respect to the scope of coverage. Table 1, which is entitled “Pesticide Uses Covered Under this General Permit”, also provides an “Annual Treatment Area Threshold” for each of the four general covered pesticide activities. This might be taken as implying that applications by a person over an annual treatment area below the annual thresholds listed in Table 1 are not covered by the general permit at all.

However the definition of the Annual Treatment Area Threshold in EPA’s draft PGP indicates that the purpose of the threshold areas is simply to designate which persons applying pesticides are required to submit NOIs. It would be helpful in clarifying the purpose of Table 1 to change the title to read “Annual Treatment Area Thresholds for Determining if NOI Submittal is Required”.

Further clarification of this issue could be provided by revising the last sentence on Page 2 of the Draft PGP to read as follows:

Table 1 describes the specific pesticide uses that are covered under this general permit. If you apply pesticides in a use pattern listed in Table 1, **then regardless of the size of the annual treatment area, you are covered your discharge of pesticides to waters of the state resulting from such activities is authorized** under this general permit as long as you comply with the terms and conditions of this general permit.

Response #18: The final column heading for Table 1 has been amended as requested. As requested, the sentence which was located at the end of Page 2 of the draft PGP has been modified.

Comment #19: NOIs: As remarked above, Table 1 of the Draft PGP includes annual treatment area thresholds that are intended to be used to determine whether a particular operator applies pesticides to a sufficiently large area to be subject to a requirement to submit an NOI. However, the Draft PGP provides no guidance on how to apply the annual treatment area thresholds. It would be quite helpful to industrial stakeholders if guidance on application of these thresholds were provided in the PGP.

Response #19: No changes have been made to the draft PGP as a result of this comment. IDEM plans to conduct public outreach sessions and may develop a guidance document for the PGP if there is significant public interest.

Comment #20: As another suggestion, Duke Energy requests that a provision be added to the Draft PGP that allows entities to voluntarily submit NOIs for coverage under the PGP even if such entities would not be required under the terms of the PGP to submit NOIs. Suggested language is included in the attached markup.

Response #20: There is no need to add language to allow for voluntary submittals of NOIs and/or development of PDMPs. The PGP does not contain any language prohibiting anyone from seeking coverage under this general permit. If any person decides to submit the NOI to ensure full compliance with the General Permit, that option already exists without the need for any special additional permit language. No changes have been made to the draft PGP as a result of this comment.

Comment #21: Technology-based effluent limitations: The technology-based effluent limitations in the Draft PGP consist solely of a requirement to comply with cited statutes relating to the State Chemist and the regulation of pesticide registration, use and application by that state agency, as well as certain regulations of the State Pesticide Review Board on those topics. As discussed in an earlier comment, it is not clear that this is a permissible approach.

Such questions could be averted if the language of the federal draft PGP (or similar language) were incorporated in the state draft since no references to other laws – either state or federal - are included. The EPA's draft PGP includes technology-based effluent limitations that generally require that operators minimize the discharge of pesticides and, more specifically, require operators to employ best management practices for each of the 4 application scenarios to:

- (1) identify the problem requiring application of pesticide;
- (2) use efficient means of pest management that minimize discharges; and
- (3) take precautions on pesticide use to avoid over-application.

If IDEM and the State Chemist's Office believe that the pesticide regulations of the State Chemist are equivalent to EPA's proposed technology-based effluent limits, as stated in the Fact Sheet for the Draft PGP, then IDEM and the State Chemist could enter into a

cooperative agreement for the State Chemist to assist IDEM and permittees with implementation of the technology-based requirements.

Response #21: It is not necessary for Indiana's Pesticide General Permit to be identical to EPA's Pesticide General Permit. It must be as stringent as EPA's general permit on an overall basis, however some flexibility is often allowed. Indiana's state pesticide regulations are more stringent than most states, so these are considered to be equivalent to EPA's proposed technology-based effluent limits. Therefore, the additional suggested language is not considered necessary. No changes have been made to the permit as a result of this comment.

As previously stated, OISC will be taking a lead role in the implementation of this PGP and especially in the development of the PDMPs. A Memorandum of Understanding between the state regulatory agencies will be in place to ensure that there are clearly defined roles and responsibilities in the administration and implementation of the PGP.

Comment #22: Water Quality-based Effluent Limitations: The stated water quality-based effluent limits (WQBLs) of the Draft PGP are problematic for practical compliance, particularly considering the express reference to numeric water quality criteria. This could imply a need for monitoring and sampling of pesticide discharges to assure compliance with any applicable numeric standards. However, not even EPA's draft PGP describes monitoring obligations involving sampling of discharges. Instead, the monitoring provisions of the EPA draft permit focus on monitoring the pesticide application operations to assure use of the lowest amount of pesticide that will provide effective pest control and to assure that application equipment is properly maintained and calibrated. It may be useful to include these monitoring provisions in the Draft PGP to preclude inferences that chemical monitoring of discharges may be required.

It would be helpful to include language in the WQBL section providing that the use of pesticides that have been approved for use in aquatic settings in accordance with approved labeling and manufacturers' instructions and, if applicable, in accordance with an IDNR permit is presumed or deemed to be compliant with water quality-based effluent limitations of the PGP. See the attached markup for suggested language.

Response #22: See Responses #9 and 10.

Comment #23: Pesticide Discharge Management Plans: The Draft PGP provides no information or direction as to what is to be done with a PDMP if required. Does the permittee develop and implement these plans and simply maintain a copy to be available for agency inspection? Alternatively, is it intended that a PDMP be submitted to IDEM or State Chemist for approval?

References to 327 IAC 15: The Draft PGP indicates that permittees are to comply with the provisions of 327 IAC 15-4. This is inconsistent with 327 IAC 5-1-1 and 327 15-4-1(a), which state that Article 15 is intended to establish general permit rules for the discharge from certain categories of point sources in lieu of individual NPDES permits.

Response #23: See Response #11. Those persons who are required to develop PDMPs are not required to submit the Plan to IDEM or OISC, unless specifically requested to do so. As previously stated, new permit language has been added to clarify this point.

Comment #24: Other suggestions: Other suggestions for clarification of the provisions of the Draft PGP are included in the attached markup.

Response #24: IDEM understands the rationale for the request to add clarification language to the general permit, however it is our intent to make this general permit as concise as possible. No changes have been made to the draft PGP as a result of this comment.

Comment #25 was received from the Marion County Health Department. This comment is listed below and is followed by IDEM's response to each comment:

Comment #25: We at the Marion County Health Department's Mosquito Control Program are writing to clarify the contents of a letter submitted to your office with the subject heading: Proposed Draft NPDES Pesticide General Permit (PGP) (Permit # ING870001). Recently, our understanding of certain provisions in the PGP has changed. Specifically, the issue of considering adulticiding activities when determining the acreage of Waters of the State that our program has treated leads our team to assume that we will undoubtedly exceed the annual threshold that determines whether an entity will be forced to submit a Notice of Intent (NOI) and abide by the resulting components of the PGP that entails. Unless the PGP is clearly defined to exclude adulticide activities from truckmounted sprayers, our program will assume that the entire swath area produced by our Ultra-Low Volume (ULV) sprayers will be deposited into a body of water, since it would be unmanageable to map, document and avoid every ditch, retention pond, etc. within our treatment area, especially since most adulticiding is done after dusk. Thus, under our current understanding, we and any other program who conducts at least 175 linear miles* (6400 acres) of adulticiding will be required to submit an NOI.

*1 LM x 300ft swath width= 36.4 acres; 6400 acres/36.4 acres= -175 LM

Secondly, the issue of who is excluded from the PGP has also come under a new light. Our original reading of the PGP lead us to believe that any applicators who are currently under the supervision of the Office of the Indiana State Chemist by holding a Category 8 pesticide license would be excluded from having to submit an NOI. We were not aware that even though every applicator at a facility might hold a Category 8 license, the 'entity' (Mosquito Control) does not and cannot obtain a Category 8 license. Thus, this exclusion would not apply to any not-for-hire mosquito control operation such as ours.

In closing, our new understanding of the PGP leads us to believe that we will be required to submit a Notice of Intent and to follow the attendant rules and regulations required by this submission. Though our program feels confident we can accomplish this task because of the many hours spent developing a Pesticide Discharge Management Plan and the highly-developed pesticide discharge tracking system we have implemented, we cannot say the same for smaller, less-funded programs around the State who perform the vital duty of mosquito control that would be required to submit an NOI under the proposed Pesticide General Permit. Thank you once again for your time in this important matter.

Response #25: See Response #3.

Comments #26 – 29 were received from the National Park Service. These comments are listed below and are followed by IDEM’s response to each comment:

Comment #26: We support your efforts to protect Indiana’s waters and other natural resources especially as they pertain to protecting the resources of Indiana Dunes National Lakeshore a unit of the National Park Service. Waters within the boundary of the national lakeshore are designated outstanding state resource waters (327 IAC 2-1.5-19). While we generally support the actions as described in the draft general permit documents, we suggest the following clarifications to help establish requirements for the use of pesticides discharged throughout the state of Indiana:

The reference to “waters of the state of Indiana” should be clearly incorporated within the draft permit and not just listed as a citation within the draft permit. Inclusion of this definition would make clear whether or not pesticide applications for the purpose of natural areas improvement such as prairie or wetland restoration are included in these regulations. Restoration efforts in prairie and wetland often occur in areas with subsurface waters or small, isolated areas of saturated soil or pockets of shallow water.

As written, it is unclear and difficult to determine if pesticide applications in such areas would be covered under the general permit.

Definition sections should include the title of each referenced law or regulation to help citizens determine which document is of interest. For example, adding “Waters” behind IC 13-11-2 and “Pesticides” behind IC 15-16-4, etc.

Clarify the annual treatment area threshold for outstanding state resource waters in Table 1. In addition to stating, “No annual treatment area threshold. Applies to any pesticide applications.”, the threshold should clearly state any amount of area treated is covered by the general permit.

Include information on how to submit a notice of intent and provide information on where to find the Office of the Indiana State Chemist guidelines for developing a Pesticide Discharge Management Plan (PDMP). Provide a PDMP template to assist citizens in developing it along with directions on how to submit a PDMP.

Response #26: The threshold for OSRWs is that any application of pesticides, no matter how small, is covered by this general permit. Language has been added to the general permit to clarify this point.

Comment #27: Provide clarification on how the permit, notice of intent and PDMP requirements apply to outstanding state resource waters:

The NPDES Permit Fact Sheet indicates “Application of pesticides to outstanding state resource waters ... to protect public health or the environment where those discharges either do not degrade water quality or only degrade water quality on a short-term or temporary basis” is covered under the general permit. It later states that discharges of pesticides to OSRWs, except as otherwise provided, are not covered. Similarly the Draft National Pollutant Discharge Elimination System Pesticide General Permits for Point Source Discharges to Waters of the State from the Application of Pesticides lists pesticide applications “to Outstanding State Resource Waters ... to protect public health or the environment” as covered under the general permit in Table 1. In Table 2, pesticide applications resulting in the discharge of any pesticides to outstanding state resource waters are listed as not covered under the general permit “except as provided in Table 1”.

The Public Notice of Draft NPDES General Permit for Pesticide Applications states that a notice of intent will be required for “an entity that applies pesticides to outstanding state resource waters.” Table 3 of the Draft National Pollutant Discharge Elimination System Pesticide General Permit states that a notice of intent must be submitted for pesticide applications to outstanding state resource waters while Table 4 states that persons licensed by the Office of Indiana State Chemist to apply pesticides and that those applying pesticides under an Indiana Department of Natural Resources (IDNR) permit are not required to submit a notice of intent. These appear to be contradictory statements.

The Draft General Permit also states that a Pesticide Discharge Management Plan (PDMP) must be developed if a notice of intent is required, while the Permit Fact Sheet indicates that a PDMP is required if pesticides are applied to outstanding state resource waters.

Response #27: The threshold for OSRWs is that any application of pesticides, no matter how small, is covered by this general permit. If the person applying the pesticide has been issued a GN number by the OISC, they don’t have to file an NOI or do a PDMP, just like any other government agency.

Comment #28: Does the coverage provided under this draft general permit satisfy the permitting requirements of IDNR for pesticide application, or will the additional permits still be required by IDNR for application of pesticides to prairies, wetlands, aquatic habitats, or any terrestrial communities? It would be helpful to clearly articulate exactly

whether this takes the place of the IDNR permit unless you exceed the annual treatment area threshold or for pesticide uses that are not covered under this draft general permit.

Response #28: This general permit does not replace or obviate the need to obtain any permits required by other agencies.

Comment #29: We request clarification of whether or not our actions would be covered by this general permit, whether or not we need to submit a notice of intent, and whether or not we need to develop a Pesticide Discharge Management Plan. Our management actions within the national lakeshore include application of pesticides in natural and developed areas, some containing subsurface or standing water, for the purpose of restoring and protecting the environment from the negative impacts of invasive species. We have several herbicide applicators licensed by the Office of the Indiana State Chemist on our staff and will obtain any required Indiana Department of Natural Resources (IDNR) permits for aquatic vegetation control.

Response #29: The National Park Service's pesticide application activities are covered by this general permit. However if the National Park Service has been issued a GN number by OISC or if any contractors that they use for pesticide applications are certified by the OISC, then NPS would not need to submit a Notice of Intent or develop a PDMP.

Comments #30 – 34 were received from Angela Rust of the Indiana Department of Natural Resources. These comments are listed below and are followed by IDEM's response to each comment:

Comment #30: Indiana Department of Natural Resources, Div. of Entomology and Plant Pathology applies aerial treatment of insecticides over rural and urban areas at several sites in several counties, of which almost all would contain some type of water sources. We also have a kudzu eradication program in which we apply herbicides to many sites across several counties, in which the individual sites may or may not contain water sources. Our gypsy moth treatments are likely to occur as early as the last week of April over a month period and then again in mid June. Kudzu treatment would not occur until September and October. Would each division of IDNR need to apply for a general permit?

Response #30: Since IDNR has been issued a GN number from OISC and any contractors which they use are certified by the OISC, IDNR will not be required to submit an NOI.

Comment #31: I assume that the permit would cover the overall project? So, we would only need one permit for gypsy moth treatments and one for kudzu treatments? Not permits for treatments over individual sites.

Response #31: Yes, the general permit would cover the overall project.

Comment #32: Is there a specific form to be used for the Notice of Intent and is it available yet?

Response #32: Yes there is a specific Notice of Intent form to be used, and it will be available by November 1, 2012.

Comment #33: As I understand we would send in the NOI along with the permit application and then the NOI has to be posted for 30 days for comment before the permit is finalized. Where is the NOI to be posted? Does IDEM post this on their website or do we have to post his information somewhere specific? Just not sure of the posting protocols.

Response #33: The Notice of Intent is the NPDES application. It does not need to be posted for 30 days by any person covered by this general permit. IDEM will post notifications on its website.

Comment #34: Lastly emergency rule Title 327 has significant areas which expire May 17. This creates a real problem for us and the gypsy moth treatments as it ends up right in the middle of a hectic treatment period and the treatments are based on biology. If we have delays, the treatments would likely have to be cancelled. We had received some information that the emergency rule would actually carry us until the end of the year, so I am not sure if it is May or end of year. I guess the main question is, would there be an extension available?

Response #34: Legislation passed in the 2011 Indiana General Assembly (P.L.81 - 2011) allows IDEM to administratively issue general permits for those general permits not contained in existing 327 IAC 15. As the pesticide general permit is a new general permit, IDEM does not need any type of emergency rulemaking to administratively issue the general permits. The previous emergency rule was necessary prior to the passage of the legislation.